

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Thursday, October 30, 2014 10:46 AM
To: Casey Roberts
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: RE: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference
Attachments: ENV_DEFENSE-#701190-v1-SC_v_EPA_(AR_haze)_Briefs_Draft_26(f)_Report.DOC

Casey/Tony –

Here's a draft joint case management statement. Let me know if you have comments or want to chat about this. I'm free anytime except between 2:30pm and 3:30pm. I tried to make the statement very concise and non-controversial. Also, if the court hasn't done anything by Friday morning, I'm going to need to contact the clerk, because I'm out of the country next week and would need a continuance in any event.

Leslie

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]
Sent: Wednesday, October 29, 2014 7:59 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Hi Leslie,

We are fine with the email you propose to send to Ms. Forehand -- thank you for drafting that nudge. With respect to the 26(f) report, I am available to discuss tomorrow anytime. I'm also available to help hammer it out tonight, based on your sample, though I would not expect the court to look too harshly on our filing it a day late considering the pending motion to continue.

Casey

Casey Roberts
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5710
(415) 977-5793 fax
casey.roberts@sierraclub.org

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

On Wed, Oct 29, 2014 at 4:44 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Casey –

The court hasn't yet acted on our request to continue the case management conference which is a bit unusual. Usually those are addressed pretty quickly. For the ADR teleconference, the scheduling notice says to contact Ms. Forehand about scheduling issues. It seems inefficient to take up their time if the case ends up being transferred, so I'd like to email Ms. Forehand with the note below.

With regard to the 26(f) report, it's due today w/o the continuance. Let's discuss tomorrow if an order does not show up by tomorrow morning. I don't want to file a report with this Court unnecessarily, but I suppose one will have to be filed eventually, so perhaps we should just do it. I can do a draft based on a similar case that explains that we expect to settle though have not completed our respective management approvals, etc., but offers a briefing schedule in the event that doesn't happen for some reason as a back-stop.

Let me know if you're okay with the email to the ADR office and discussing the 26(f) tomorrow in the event we don't see an order.

Thanks.

Leslie

Ms. Forehand —

The parties have requested a continuance of the initial case management conference and the ADR Phone Conference pending resolution of Defendant's motion to transfer venue. The Court has not yet ruled on our request, but we wanted to advise the ADR Program Staff. If possible, to avoid holding a conference for a matter that might not remain in the District, we suggest that the conference be rescheduled to allow time for the Court to act on our request. Counsel for both parties are generally available during the week of November 10.

Best regards,

Leslie

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]

Sent: Monday, October 27, 2014 4:51 PM

To: Hill, Leslie (ENRD)

Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea

Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Yes -- I meant the joint stipulation as modified in your email. Even if the ADR call only lasts a few minutes, it is just one more thing to schedule around, so I'd rather continue it as well.

Casey

Casey Roberts

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5710

(415) 977-5793 fax

casey.roberts@sierraclub.org

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

On Mon, Oct 27, 2014 at 1:45 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Thanks Casey. Just so we're on the same page, you're okay with the stip with the changes including adding the ADR sentence?

Leslie

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]

Sent: Monday, October 27, 2014 4:43 PM

To: Hill, Leslie (ENRD)

Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea

Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Hi Leslie,

Thanks for pointing out that the court's order already automatically extends the related deadlines. I just talked to Tony and we are fine with the joint stipulation -- thank you so much for drafting and reaching out to us. Hopefully the court will act on the motion to transfer soon.

Casey

Casey Roberts

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5710

(415) 977-5793 fax

casey.roberts@sierraclub.org

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

On Mon, Oct 27, 2014 at 1:32 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

If we're going to mention the ADR conference, let's go ahead and ask that it be continued for the same reason since I would expect we would just tell the ADR staff that there is a pending motion which will trigger then to set another call in a month. I was just trying to keep it simple. Proposed addition:

Further, the parties request that the ADR Phone Conference set for October 31, 2014 at 10:00am (Dkt. No. 18) also be continued until after the court rules on the Motion.

Proposed order: The ADR Phone Conference set for October 31, 2014 at 10:00am (Dkt. No. 18) is hereby continued until a after the Court rules on the pending motion (Dkt. No. 19). The ADR Program Office will issue a revised scheduling notice accordingly.

I would also file the stipulation as an ADR stipulation so the ADR staff acts on it as well.

I don't believe that we need to mention the statement due date because the court's order (Dkt. No. 7) states:

*If the Initial Case Management Conference is continued, the other deadlines are continued accordingly.

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]

Sent: Monday, October 27, 2014 1:29 PM

To: Hill, Leslie (ENRD)

Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea

Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Thanks Leslie. Tony is in a hearing today, but when I've had a chance to discuss with him, we'll get back to you as soon as possible. I do not expect we'll have any concerns.

It seems like it might help to clarify in the motion that we are not requesting a continuance of the ADR conference, just the CMC. Also, should we expressly seek a continuance of the deadlines for 26(f) statements as part of this motion, so there is no ambiguity?

Casey

Casey Roberts

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5710

(415) 977-5793 fax

casey.roberts@sierraclub.org

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

On Mon, Oct 27, 2014 at 9:12 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey –

We have the initial CMC coming up next week and the 26(f) statement due a week in advance. I propose that we request a continuance pending the court's decision on the motion to transfer. That also has the automatic effect of pushing out the 26(f) date as well. I'm also out of the country next week, so I would need to request a continuance in any event. In the attached draft proposed order, I left the date of the continuance blank so the court could fill that in. Let me know if this is okay or if you have comments. I didn't include the ADR conference in the continuance because that is on the phone and lasts only a few minutes.

Leslie

Nann, Barbara

From: Casey Roberts <casey.roberts@sierraclub.org>
Sent: Thursday, October 30, 2014 12:08 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Leslie,
I have reviewed this and it looks fine. You have authorization to file this on Sierra Club's behalf.

Casey

Casey Roberts
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5710
(415) 977-5793 fax
casey.roberts@sierraclub.org

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

On Thu, Oct 30, 2014 at 8:46 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Casey/Tony –

Here's a draft joint case management statement. Let me know if you have comments or want to chat about this. I'm free anytime except between 2:30pm and 3:30pm. I tried to make the statement very concise and non-controversial. Also, if the court hasn't done anything by Friday morning, I'm going to need to contact the clerk, because I'm out of the country next week and would need a continuance in any event.

Leslie

From: Casey Roberts [<mailto:casey.roberts@sierraclub.org>]
Sent: Wednesday, October 29, 2014 7:59 PM

To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Hi Leslie,

We are fine with the email you propose to send to Ms. Forehand -- thank you for drafting that nudge. With respect to the 26(f) report, I am available to discuss tomorrow anytime. I'm also available to help hammer it out tonight, based on your sample, though I would not expect the court to look too harshly on our filing it a day late considering the pending motion to continue.

Casey

Casey Roberts

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5710

(415) 977-5793 fax

casey.roberts@sierraclub.org

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

On Wed, Oct 29, 2014 at 4:44 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Casey --

The court hasn't yet acted on our request to continue the case management conference which is a bit unusual. Usually those are addressed pretty quickly. For the ADR teleconference, the scheduling notice says to contact Ms. Forehand about scheduling issues. It seems inefficient to take up their time if the case ends up being transferred, so I'd like to email Ms. Forehand with the note below.

With regard to the 26(f) report, it's due today w/o the continuance. Let's discuss tomorrow if an order does not show up by tomorrow morning. I don't want to file a report with this Court unnecessarily, but I suppose one will have to be filed eventually, so perhaps we should just do it. I can do a draft based on a similar case that explains that we expect to settle though have not completed our respective management approvals, etc., but offers a briefing schedule in the event that doesn't happen for some reason as a back-stop.

Let me know if you're okay with the email to the ADR office and discussing the 26(f) tomorrow in the event we don't see an order.

Thanks.

Leslie

Ms. Forehand –

The parties have requested a continuance of the initial case management conference and the ADR Phone Conference pending resolution of Defendant's motion to transfer venue. The Court has not yet ruled on our request, but we wanted to advise the ADR Program Staff. If possible, to avoid holding a conference for a matter than might not remain in the District, we suggest that the conference be rescheduled to allow time for the Court to act on our request. Counsel for both parties are generally available during the week of November 10.

Best regards,

Leslie

From: Casey Roberts [<mailto:casey.roberts@sierraclub.org>]

Sent: Monday, October 27, 2014 4:51 PM

To: Hill, Leslie (ENRD)

Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea

Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Yes -- I meant the joint stipulation as modified in your email. Even if the ADR call only lasts a few minutes, it is just one more thing to schedule around, so I'd rather continue it as well.

Casey

Casey Roberts

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5710

(415) 977-5793 fax

casey.roberts@sierraclub.org

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

On Mon, Oct 27, 2014 at 1:45 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Thanks Casey. Just so we're on the same page, you're okay with the stip with the changes including adding the ADR sentence?

Leslie

From: Casey Roberts [<mailto:casey.roberts@sierraclub.org>]

Sent: Monday, October 27, 2014 4:43 PM

To: Hill, Leslie (ENRD)

Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea

Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Hi Leslie,

Thanks for pointing out that the court's order already automatically extends the related deadlines. I just talked to Tony and we are fine with the joint stipulation -- thank you so much for drafting and reaching out to us. Hopefully the court will act on the motion to transfer soon.

Casey

Casey Roberts

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

[\(415\) 977-5710](tel:(415)977-5710)

[\(415\) 977-5793](tel:(415)977-5793) fax

casey.roberts@sierraclub.org

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

On Mon, Oct 27, 2014 at 1:32 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

If we're going to mention the ADR conference, let's go ahead and ask that it be continued for the same reason since I would expect we would just tell the ADR staff that there is a pending motion which will trigger then to set another call in a month. I was just trying to keep it simple. Proposed addition:

Further, the parties request that the ADR Phone Conference set for October 31, 2014 at 10:00am (Dkt. No. 18) also be continued until after the court rules on the Motion.

Proposed order: The ADR Phone Conference set for October 31, 2014 at 10:00am (Dkt. No. 18) is hereby continued until a after the Court rules on the pending motion (Dkt. No. 19). The ADR Program Office will issue a revised scheduling notice accordingly.

I would also file the stipulation as an ADR stipulation so the ADR staff acts on it as well.

I don't believe that we need to mention the statement due date because the court's order (Dkt. No. 7) states:

*If the Initial Case Management Conference is continued, the other deadlines are continued accordingly.

From: Casey Roberts [<mailto:casey.roberts@sierraclub.org>]

Sent: Monday, October 27, 2014 1:29 PM

To: Hill, Leslie (ENRD)

Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea

Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Thanks Leslie. Tony is in a hearing today, but when I've had a chance to discuss with him, we'll get back to you as soon as possible. I do not expect we'll have any concerns.

It seems like it might help to clarify in the motion that we are not requesting a continuance of the ADR conference, just the CMC. Also, should we expressly seek a continuance of the deadlines for 26(f) statements as part of this motion, so there is no ambiguity?

Casey

Casey Roberts

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

[\(415\) 977-5710](tel:(415)977-5710)

[\(415\) 977-5793](tel:(415)977-5793) fax

casey.roberts@sierraclub.org

CONFIDENTIAL LEGAL COMMUNICATION/WORK PRODUCT

This e-mail may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this e-mail inadvertently, please notify me and delete all versions from your system. Thank you.

On Mon, Oct 27, 2014 at 9:12 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey –

We have the initial CMC coming up next week and the 26(f) statement due a week in advance. I propose that we request a continuance pending the court's decision on the motion to transfer. That also has the automatic effect of pushing out the 26(f) date as well. I'm also out of the country next week, so I would need to request a continuance in any event. In the attached draft proposed order, I left the date of the continuance blank so the court could fill that in. Let me know if this is okay or if you have comments. I didn't include the ADR conference in the continuance because that is on the phone and lasts only a few minutes.

Leslie

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Wednesday, November 05, 2014 11:40 AM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD
Attachments: ENV_DEFENSE-#692054-v4-
Sierra_Club_v_McCarthy_(AR_Haze)_Briefs_Draft_Proposed_Consent_Decree - Sierra Club
edits.doc; NPCA et al v Jackson - consent decree 2012.03.30.pdf

Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey -

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--
Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589

(415) 977-5793 fax
tony.mendoza@sierraclub.org

1 SAM HIRSCH
2 Acting Assistant Attorney General
3 Environment & Natural Resources Division
4 United States Department of Justice
5 LESLIE M. HILL (D.C. Bar No. 476008)
6 Leslie.Hill@usdoj.gov
7 Environmental Defense Section
8 601 D Street N.W., Suite 8000
9 Washington D.C. 20004
10 Telephone (202) 514-0375
11 Facsimile (202) 514-8865

12 Attorneys for Defendant

13 [Sierra Club Arkansas Counsel]
14 CASEY A. ROBERTS (CA Bar No. 253474)
15 SIERRA CLUB
16 85 Second Street, 21st Floor
17 San Francisco, CA 94105
18 (415) 977-5710
19 (415) 977-5793 (facsimile)
20 casey.roberts@sierraclub.org

21 ~~[additional attorneys for Plaintiff included in signature block]~~

22 Attorneys for Plaintiff

23 **IN THE UNITED STATES DISTRICT COURT**
24 **FOR THE EASTERN DISTRICT OF ARKANSAS**

25 SIERRA CLUB,

26 Plaintiff,

27 v.

28 GINA McCARTHY, in her official capacity
as the Administrator of the United States
Environmental Protection Agency,

Defendant.

Case No. 4:14-cv-00643-JLH

[PROPOSED] CONSENT DECREE

1 WHEREAS, on August 6, 2014, Plaintiff Sierra Club ("Plaintiff") filed the above-
2 captioned matter in the U.S. District Court for the Northern District of California against
3 Gina McCarthy, in her official capacity as Administrator of the United States
4 Environmental Protection Agency (hereinafter "EPA" or "Defendant");

5 WHEREAS, by order dated October 30, 2014, the U.S. District Court for the
6 Northern District of California transferred this case to this District;

7 WHEREAS, Plaintiff alleges that EPA has failed to undertake certain non-
8 discretionary duties under the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and
9 that such alleged failure is actionable under section 304(a)(2) of the CAA, § 7604(a)(2);

10 WHEREAS, Plaintiff alleges that EPA has failed to perform a duty mandated by
11 CAA section 110(c)(1)(B), 42 U.S.C. § 7410(c)(1)(B), to promulgate a Federal
12 implementation plan within 2 years after disapproving a state implementation plan
13 ("SIP") submission in whole or in part;

14 WHEREAS, Plaintiff alleges that on March 12, 2012, EPA disapproved, in part,
15 a revision to the Arkansas SIP intended to address the regional haze ("RH") requirements
16 of section 169A(b)(2)(B), 42 U.S.C. § 7491(b)(2)(B), and the implementing regulations
17 set forth at 40 C.F.R. § 51.308(d)(1)(A), *Final Rule*, 77 Fed. Reg. 14,604 (Mar. 12,
18 2014);

19 WHEREAS, Plaintiff alleges that on March 12, 2012, EPA also partially
20 disapproved the portion of the Arkansas SIP submittal that addresses the visibility
21 requirement of section 110(a)(2)(D)(i)(II), 42 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997
22 8-hour ozone, *Final Rule*, 62 Fed. Reg. 38,856 (Jul 18, 1997), and 1997 fine particulate
23 matter ("PM_{2.5}"), *Final Rule*, 62 Fed. Reg. 38,652 (Jul 18, 1997), national ambient air
24 quality standards ("NAAQS") and that the provisions to prohibit emissions from
25 interfering with measures required in another state to protect visibility, 77 Fed. Reg. at
26 14,604;

27 WHEREAS, on March 12, 2012, EPA stated that it "must, within 24 months
28 following a final disapproval, either approve a SIP or promulgate a Federal

1 Implementation Plan ["FIP"]. We will of course consider, and would prefer, approving a
2 SIP if the state submits a revised plan that we can approve before the expiration of the
3 mandatory FIP clock for the portions of the SIP we are disapproving in this rulemaking
4 action," 77 Fed. Reg. at 14,606;

5 WHEREAS, Plaintiff alleges that the referenced EPA partial disapproval
6 decisions took effect on April 11, 2012;

7 WHEREAS, EPA did not, by ~~April 11, 2014~~March 12, 2012, promulgate a
8 regional haze FIP or approve a revised regional haze SIP for Arkansas;

9 WHEREAS, EPA did not, by ~~March 12, 2012~~April 11, 2014, promulgate a FIP or
10 approve a revised SIP for Arkansas addressing the requirements of section
11 110(a)(2)(D)(i)(II), 42 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997 8-hour ozone NAAQS
12 and the 1997 PM_{2.5} NAAQS;

13 WHEREAS, the relief requested in the Complaint includes, among other things,
14 an order from this Court to establish a date certain by which EPA must fulfill its
15 obligations;

16 WHEREAS, Plaintiff and EPA have agreed to a settlement of this action without
17 admission of any issue of fact or law, except as expressly provided herein;

18 WHEREAS, Plaintiff and EPA, by entering into this Consent Decree, do not
19 waive or limit any claim, remedy, or defense, on any grounds, related to any final EPA
20 action;

21 WHEREAS, Plaintiff and EPA consider this Consent Decree to be an adequate
22 and equitable resolution of all the claims in this matter and therefore wish to effectuate a
23 settlement;

24 WHEREAS, it is in the interest of the public, Plaintiff Sierra Club, Defendant
25 EPA, and judicial economy to resolve this matter without protracted litigation;

26 WHEREAS, Plaintiff and EPA agree that this Court has jurisdiction over this
27 matter pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. §
28 7604(a)(2); and

1 ~~WHEREAS, the parties dispute whether venue is proper in the Northern District~~
2 ~~of California pursuant to 28 U.S.C. § 1391(e) and N.D. Cal. Civ. Local Rule 3-2(e)-(d);~~
3 ~~and~~

4 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent
5 Decree is fair, reasonable, in the public interest, and consistent with the Clean Air Act;

6 NOW THEREFORE, before the taking of testimony, without trial or
7 determination of any issues of fact or law, and upon the consent of Plaintiff Sierra Club
8 and Defendant EPA, it is hereby ordered, adjudged and decreed that:

9 1. The appropriate EPA official shall:

10 a. either sign a notice of proposed rulemaking in which it proposes
11 approval of a revised SIP submission from Arkansas, promulgation of a FIP, or partial
12 approval of a revised SIP submission and promulgation of a partial FIP for Arkansas that
13 collectively addresses the deficiencies in Arkansas' regional haze SIP identified by EPA
14 its March 12, 2012 action, 77 Fed. Reg. 14,604, no later than February 16, 2015; and sign
15 a notice of final rulemaking to address these requirements no later than December 15,
16 2015; and

17 b. either sign a notice of proposed rulemaking in which it proposes
18 approval of a revised SIP submission, promulgation of a FIP, or partial approval of a
19 revised SIP submission and promulgation of a partial FIP for Arkansas that collectively
20 addresses the deficiencies in Arkansas' SIP related to the requirements of CAA section
21 110(a)(2)(D)(i)(II), 42 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997 8-hour ozone NAAQS
22 and the 1997 PM_{2.5} NAAQS, identified by EPA its March 12, 2012 action, 77 Fed. Reg.
23 14,604, no later than February 16, 2015; and sign a notice of final rulemaking to address
24 these requirements no later than December 15, 2015.

25 2. EPA shall, within 15 days of signature~~(A1)~~, deliver notice of each action taken
26 pursuant to paragraph 1 of this Consent Decree to the Office of the Federal Register for
27 review and publication.

1 3. After EPA has completed the actions set forth in Paragraph 1 of this Consent
2 Decree and after notice of each proposed and final action required by paragraph 1 has
3 been published in the Federal Register, EPA may move to have this Decree terminated
4 and the action dismissed. Plaintiff shall have fourteen (14) days in which to respond to
5 such motion, unless the parties stipulate to a longer time for Plaintiff to respond.

6 4. The deadlines established by this Consent Decree may be extended (a) by
7 written stipulation of Plaintiff and EPA with notice to the Court, or (b) by the Court upon
8 motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure
9 and upon consideration of any response by Plaintiff and any reply by EPA. Any other
10 provision of this Consent Decree also may be modified by the Court following motion of
11 an undersigned party for good cause shown pursuant to the Federal Rules of Civil
12 Procedure and upon consideration of any response by a non-moving party and any reply.

13 5. If a lapse in appropriations occurs within one hundred and twenty (120) days
14 prior to the deadline in Paragraph 1 in this Decree, that deadlines shall be extended
15 automatically one day for each day of the lapse in appropriations.

16 6. Plaintiff and EPA agree that this Consent Decree shall constitute a complete
17 and final settlement of all claims that Plaintiff has asserted in this case. The Sierra Club
18 therefore discharges and covenants not to sue the United States, including EPA, for any
19 such claims.

20 7. In the event of a dispute between Plaintiff and EPA concerning the
21 interpretation or implementation of any aspect of this Consent Decree, the disputing party
22 shall provide the other party with a written notice outlining the nature of the dispute and
23 requesting informal negotiations. These parties shall meet and confer in order to attempt
24 to resolve the dispute. If these parties are unable to resolve the dispute within ten (10)
25 business days after receipt of the notice, either party may petition the Court to resolve the
26 dispute.

27 8. No motion or other proceeding seeking to enforce this Consent Decree or for
28 contempt of Court shall be properly filed unless the procedure set forth in Paragraph 7

1 has been followed, and the moving party has provided the other party with written notice
2 received at least ten (10) business days before the filing of such motion or proceeding.

3 9. EPA agrees that Plaintiff is entitled to recover its costs of litigation (including
4 attorney fees) incurred in this matter pursuant to 42 U.S.C. § 7604(d). The deadline for
5 filing a motion for costs of litigation (including attorney fees) for activities performed
6 prior to entry of the Consent Decree is hereby extended until ninety (90) days after this
7 Consent Decree is entered by the Court. During this period, the Parties shall seek to
8 resolve informally any claim for costs of litigation (including attorney fees), and if they
9 cannot, Plaintiff will file a motion for costs of litigation (including attorney fees) or a
10 stipulation or motion to extend the deadline to file such a motion. Plaintiff reserves its
11 right to seek litigation costs for any work performed after the lodging of this Consent
12 Decree. EPA does not concede that Plaintiff will be entitled to recover costs incurred
13 after the lodging of this Consent Decree, and the parties reserve all claims and defenses
14 with respect to any future costs of litigation claim. ~~EPA reserves the right to oppose any~~
15 ~~such request.~~

16 10. This Court shall retain jurisdiction over this matter to enforce the terms of
17 this Consent Decree and to consider any requests for costs of litigation, including
18 attorney fees.

19 11. Nothing in the terms of this Consent Decree shall be construed (a) to confer
20 upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction
21 of the United States Courts of Appeals under CAA section 307(b)(1),
22 42 U.S.C. § 7607(b)(1) or (b) to waive any claims, remedies, or defenses that the parties
23 may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

24 12. Nothing in this Consent Decree shall be construed to limit or modify any
25 discretion accorded EPA by the Clean Air Act or by general principles of administrative
26 law in taking the actions which are the subject of this Consent Decree, including the
27 discretion to alter, amend, or revise any final actions promulgated pursuant to this
28 Consent Decree. EPA's obligation to perform each action specified in this Consent

Decree does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

13. Except as expressly provided herein, nothing in this Consent Decree shall be construed as an admission of any issue of fact or law nor to waive or limit any claim, remedy, or defense, on any grounds, related to any final action EPA takes with respect to the actions addressed in this Consent Decree.

14. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiff and EPA. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

15. The parties agree and acknowledge that before this Consent Decree can be finalized and entered by the Court, EPA must provide notice of this Consent Decree in the Federal Register and an opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). After this Consent Decree has undergone notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any written comments in determining whether to withdraw or withhold their consent to the Consent Decree, in accordance with CAA section 113(g). If the Administrator and/or the Attorney General do not elect to withdraw or withhold consent, EPA shall promptly file a motion that requests that the Court enter this Consent Decree.

16. Any notices required or provided for by this Consent Decree shall be in writing, via electronic mail or other means, and sent to the following (or to any new address of counsel as filed and listed in the docket of the above-captioned matter, at a future date):

For Plaintiff Sierra Club:

[Sierra Club Arkansas Counsel]

Casey A. Roberts
Tony G. Mendoza

1 Sierra Club
2 85 Second Street, 211d Floor
3 San Francisco, CA 94105
4 (415) 977-5710 (Roberts)
5 (415) 977-5589 (Mendoza)
6 (415) 977-5793 (facsimile)
7 casey.roberts@sierraclub.org
8 tony.mendoza@sierraclub.org

9 For Defendant EPA:

10 Leslie M. Hill
11 U.S. Department of Justice
12 Environment & Natural Resources Division
13 Environmental Defense Section
14 601 D Street N.W., Suite 8000
15 Washington D.C. 20004
16 Tel. (202) 514-0375
17 Email: leslie.hill@usdoj.gov

18 17. EPA and Plaintiff recognize and acknowledge that the obligations imposed
19 upon EPA under this Consent Decree can only be undertaken using appropriated funds
20 legally available for such purpose. No provision of this Consent Decree shall be
21 interpreted as or constitute a commitment or requirement that the United States obligate
22 or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
23 applicable provision of law.

24 18. If for any reason the Court should decline to approve this Consent Decree in
25 the form presented, this agreement is voidable at the sole discretion of either party and
26 the terms of the proposed Consent Decree may not be used as evidence in any litigation
27 between the parties.

28 19. The undersigned representatives of Plaintiff Sierra Club and Defendant EPA
certify that they are fully authorized by the party they represent to consent to the Court's
entry of the terms and conditions of this Decree.

SO ORDERED on this _____ day of _____, 2014.

JAMES DONATOL HOLMES
UNITED STATES DISTRICT JUDGE

//
//
COUNSEL FOR PLAINTIFF:

/s/ [first m. last] (email authorization 9/XX/14)
[Sierra Club Arkansas Counsel]

CASEY A. ROBERTS (CA Bar No. 253474)
SIERRA CLUB
85 Second Street, 211d Floor
San Francisco, CA 94105
(415) 977-5710
(415) 977-5793 (facsimile)
casey.roberts@sierraclub.org

TONY G. MENDOZA (admitted *Pro Hac Vice*)
SIERRA CLUB
85 Second Street, 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 (facsimile)
tony.mendoza@sierraclub.org

Attorneys for Plaintiff Sierra Club

COUNSEL FOR DEFENDANT:

SAM HIRSCH
Acting Assistant Attorney General
Environment & Natural Resources Division

/s/ Leslie M. Hill
LESLIE M. HILL (D.C. Bar No. 476008)
Environmental Defense Section
601 D Street N.W., Suite 8000
Washington D.C. 20004
Tel. (202) 514-0375
Email: Leslie.Hill@usdoj.gov

Attorneys for Defendant EPA

Of counsel:
Barbara A. Nann
Assistant Regional Counsel
Region 6
U.S. Environmental Protection Agency

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL PARKS CONSERVATION)
ASSOCIATION, MONTANA ENVIRONMENTAL)
INFORMATION CENTER, GRAND CANYON)
TRUST, SAN JUAN CITIZENS ALLIANCE,)
OUR CHILDREN'S EARTH FOUNDATION,)
PLAINS JUSTICE, POWDER RIVER BASIN)
RESOURCE COUNCIL, SIERRA CLUB,)
AND ENVIRONMENTAL DEFENSE FUND.)

Plaintiffs,)

v.)

LISA JACKSON, in her official capacity as)
Administrator, United States Environmental)
Protection Agency,)

Defendant.)

CIVIL ACTION NO.
1: 11-cv-01548 (ABJ)

FILED

MAR 30 2012

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

PARTIAL CONSENT DECREE

This Partial Consent Decree (hereinafter "Consent Decree" or "decree") is entered into by Plaintiffs National Parks Conservation Association, Montana Environmental Information Center, Grand Canyon Trust, San Juan Citizens Alliance, Our Children's Earth Foundation, Plains Justice, Powder River Basin Resource Council, Sierra Club, and Environmental Defense Fund ("Plaintiffs"), and by Defendant Lisa Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA" or "the Administrator").

WHEREAS, Section 110(c) of the Clean Air Act, 42 U.S.C. § 7410(c), requires the Administrator of EPA to promulgate a federal implementation plan ("FIP") within two years of a finding that a state has failed to make a required state implementation plan ("SIP") submittal. The pertinent provision of Section 110(c) states:

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under section 110(k)(1)(A).

WHEREAS, on January 15, 2009, EPA found that the following 34 States¹ had failed to submit Clean Air Act SIPs addressing any of the required regional haze SIP elements of 40 C.F.R. § 51.308: Alaska, California, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, U.S. Virgin Islands, Virginia, Washington, and Wisconsin. 74 Fed. Reg. 2392, 2393 (Jan. 15, 2009);

WHEREAS, on January 15, 2009 EPA also found that the following five states had submitted some, but not all, of the required regional haze SIP elements set forth at 40 C.F.R. §§ 51.308 and 51.309: Arizona—40 C.F.R. § 51.309(g) and 40 C.F.R. § 51.309(d)(4); Colorado—40 C.F.R. § 51.308(d) and 40 C.F.R. § 51.308(e) for two sources; Michigan—40 C.F.R. § 51.308(d) and 40 C.F.R. § 51.308(e) for six sources; New Mexico—40 C.F.R. § 51.309(g) and 40 C.F.R. § 51.309(d)(4); Wyoming—40 C.F.R. § 51.309(g). 74 Fed. Reg. at 2393;

WHEREAS, on January 15, 2009, EPA stated that its finding “starts the two-year clock for the promulgation by EPA of a FIP. EPA is not required to promulgate a FIP if the state makes the required SIP submittal and EPA takes final action to approve the submittal within two years of EPA’s finding.” 74 Fed. Reg. at 2393;

WHEREAS, EPA did not, by January 15, 2011, promulgate regional haze FIPs or approve regional haze SIPs for any of the 34 states for which it found on January 15, 2009 a

¹ Throughout this Consent Decree, the term “state” or “State” has the meaning provided in 42 U.S.C. § 7602(d).

failure to submit SIPs addressing any of the required regional haze SIP elements, and EPA also did not, by January 15, 2011, promulgate regional haze FIPs or approve regional haze SIPs correcting the non-submittal deficiencies that EPA found on January 15, 2009 with respect to the regional haze SIP requirements for Arizona, Colorado, Michigan, New Mexico and Wyoming;

WHEREAS to meet the regional haze implementation plan requirements that were due by December 17, 2007 under EPA's regional haze regulations the following states (and one region) submitted regional haze SIPs to EPA prior to January 15, 2009 (hereinafter, "regional haze SIP submittals"), and whereas EPA has yet to take final action on such submittals pursuant to 42 U.S.C. 7410(k): Alabama; Albuquerque, NM; Iowa; Louisiana; Mississippi; Missouri; North Carolina; South Carolina; Tennessee; and West Virginia;

WHEREAS, Plaintiffs served prior notice on the Administrator alleging that her failure to promulgate regional haze FIPs and take final action on regional haze SIPs as described above constituted failure to perform duties that are not discretionary under the Act, and of Plaintiffs' intent to initiate the present action. This notice was provided via certified letters, posted January 19, 2011, and addressed to the Administrator;

WHEREAS, Plaintiffs filed a complaint pursuant to CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2), alleging failure by the Administrator to perform nondiscretionary duties as referenced above;

WHEREAS, during the pendency of this case EPA took final action with respect to regional haze implementation plans for Oklahoma (all BART elements), Kansas, and New Jersey;

WHEREAS, except for Plaintiffs' claim as to EPA's obligations with respect to Florida, Plaintiffs and EPA (collectively, the "Parties") wish to effectuate a settlement of the above-captioned case without expensive and protracted litigation, and without a litigated resolution of any issue of law or fact;

WHEREAS, the Parties consider this Consent Decree to be an adequate and equitable resolution of the claims in the above-captioned case except for Plaintiffs' claim as to EPA's obligations with respect to Florida, and consent to entry of this Consent Decree; and

WHEREAS, the Court, by entering this Consent Decree, finds that this Consent Decree is fair, reasonable, in the public interest, and consistent with the CAA, 42 U.S.C. §§ 7401 *et seq.*

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of fact or law, and upon the consent of the Parties, it is hereby ORDERED,

ADJUDGED, and DECREED that:

1. This Court has subject matter jurisdiction over the claims set forth in the Complaint and to order the relief contained in this Consent Decree.
2. Venue is proper in the United States District Court for the District of Columbia.

Resolution of Claims

3. By the "Proposed Promulgation Deadlines" set forth in Table A below EPA shall sign a notice(s) of proposed rulemaking in which it proposes approval of a SIP, promulgation of a FIP, partial approval of a SIP and promulgation of a partial FIP, or approval of a SIP or promulgation of a FIP in the alternative, for each State therein, that collectively meet the regional haze implementation plan requirements that were due by December 17, 2007 under EPA's regional haze regulations.

4. By the "Final Promulgation Deadlines" set forth in Table A below, EPA shall sign a notice(s) of final rulemaking promulgating a FIP for each State therein to meet the regional haze implementation plan requirements that were due by December 17, 2007 under EPA's regional haze regulations, except where, by such deadline EPA has for a State therein signed a notice of final rulemaking unconditionally approving a SIP, or promulgating a partial FIP and unconditional approval of a portion of a SIP, that collectively meet the regional haze implementation plan requirements that were due by December 17, 2007 under EPA's regional haze regulations.

TABLE A

Deadlines for EPA to Sign Notice of Promulgation for Proposed and Final Regional Haze FIPs and/or Approval of SIPs ("RH" = Regional Haze)

Proposed Promulgation Deadlines	Final Promulgation Deadlines	State
	December 13, 2011	Nevada (except BART determination for Reid Gardner Generating Station)
	March 15, 2012	District of Columbia Maine
	March 29, 2012	South Dakota
	May 30, 2012	Minnesota (except BART determination for the Arcelor-Mittal, Hibbing Taconite, Northshore Mining, United Taconite, U.S. Steel – Keetac, and U.S. Steel – Minntac taconite ore processing facilities) Illinois Indiana Ohio Pennsylvania Virginia
	June 15, 2012	Alaska (all BART elements) Georgia Maryland Nebraska New Hampshire Rhode Island Vermont Wisconsin
March 15, 2012	July 13, 2012	Connecticut
April 2, 2012	July 13, 2012	Nevada (BART determination for Reid Gardner Generating Station)
April 16, 2012	August 15, 2012	New Mexico (all remaining RH SIP elements)
April 16, 2012	August 16, 2012	New York

May 14, 2012	September 14, 2012	Hawaii Virgin Islands
May 15, 2012	September 14, 2012	Massachusetts
May 15, 2012	November 15, 2012	Alaska (all remaining RH SIP elements) Arizona Idaho (all remaining RH SIP elements) Oklahoma (all remaining RH SIP elements) Oregon (all remaining RH SIP elements) Texas Washington
July 13, 2012	November 15, 2012	Michigan Minnesota (BART determination for the Arcelor-Mittal, Hibbing Taconite, Northshore Mining, United Taconite, U.S Steel – Keetac, and U.S. Steel – Minntac taconite ore processing facilities) taconite ore processing facilities)

5. By the “Proposed Promulgation Deadlines” set forth in Table B below EPA shall sign a notice of proposed rulemaking in which it proposes to approve or disapprove, in accordance with 42 U.S.C. § 7410(k), the regional haze SIP submittals for each state or area indicated.
6. By the “Final Promulgation Deadlines” set forth in Table B below, EPA shall sign a notice of final rulemaking in which it approves or disapproves, in accordance with 42 U.S.C. § 7410(k), the regional haze SIP submittals for each state or area indicated.

TABLE B

Deadlines for EPA to Sign Notices of Promulgation for Proposed and Final Approval or Disapproval of Regional Haze SIP Submissions

Proposed Promulgation Deadlines	Final Promulgation Deadlines	State or Area
	March 15, 2012	West Virginia
	April 15, 2012	Tennessee (except for BART determination for Eastman Chemical)
	May 15, 2012	Tennessee (BART determination for Eastman Chemical)
February 15, 2012	June 15, 2012	Alabama Iowa Louisiana Mississippi Missouri North Carolina South Carolina
April 16, 2012	August 15, 2012	Albuquerque, NM

General Provisions

7. The deadlines in Table A or B may be extended for a period of 60 days or less by written stipulation executed by counsel for EPA and Plaintiffs and filed with the Court. Any other extension of a deadline in Table A or B may be approved by the Court upon motion made pursuant to the Federal Rules of Civil Procedure by EPA and upon consideration of any response by Plaintiffs and reply by EPA.
8. EPA agrees that Plaintiffs are entitled to recover their costs of litigation (including attorneys' fees) ("litigation costs") incurred in this matter pursuant to 42 U.S.C. § 7604(d). The deadline for the filing of any motion for litigation costs for activities performed prior to the lodging of this decree with the Court is hereby extended for a period of 120 days. During this time the Parties shall seek to resolve informally any claim for litigation costs, and if they cannot reach a resolution, Plaintiffs may seek such litigation costs from the Court. The Court shall retain jurisdiction to resolve any request for litigation costs. Plaintiffs reserve their right to seek litigation costs for any work performed after the lodging of this Consent Decree. EPA does not concede that Plaintiffs will be entitled to fees for any work performed after the lodging of the Consent Decree, and the parties reserve all claims and defenses with respect to any future costs of litigation claim.
9. No later than ten business days following signature by the Administrator or her delegatee of the notice of any proposed or final rulemaking referenced above, EPA shall deliver the notice to the Office of the Federal Register for review and prompt publication. Following such delivery to the Office of the Federal Register, EPA shall not take any action (other than is necessary to correct any typographical errors or

other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register. EPA shall make available to Plaintiffs copies of the notices referenced herein within five business days following signature by the Administrator or her delegatee.

10. Plaintiffs and EPA shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.
11. Nothing in this Consent Decree shall be construed to limit or modify any discretion accorded EPA by the CAA or by general principles of administrative law in taking the actions which are the subject of this Consent Decree, including the discretion to alter, amend, or revise any responses or final actions contemplated by this Consent Decree. EPA's obligation to perform the actions specified by Paragraphs 3 through 6 does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.
12. Nothing in this Consent Decree shall be construed as an admission of any issue of fact or law or to waive or limit any claim or defense, on any grounds, related to any final action EPA may take with respect to the SIPs or FIPs identified in paragraphs 3 through 6 of this Consent Decree.
13. Nothing in this Consent Decree shall be construed to confer upon the district court jurisdiction to review any final decision made by EPA pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to confer upon the district court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Court of Appeals pursuant to 42 U.S.C. §§ 7607(b)(1) and 7661d.

Nothing in this Consent Decree shall be construed to waive any remedies or defenses the Parties may have under 42 U.S.C. § 7607(b)(1).

14. The Parties recognize and acknowledge that the obligations imposed upon EPA under this Consent Decree can only be undertaken using appropriated funds legally available for such purpose. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

15. Any notices required or provided for by this Consent Decree shall be made in writing and sent via e-mail to the following:

For Plaintiffs:

David Baron
dbaron@earthjustice.org

Reed Zars
rzars@lariat.org

For Defendant:

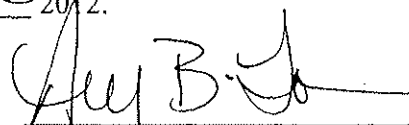
Eileen T. McDonough
eileen.mcdonough@usdoj.gov

Lea Anderson
anderson.lea@epa.gov

16. In the event of a dispute among the Parties concerning the interpretation or implementation of any aspect of this Consent Decree, the disputing Party shall provide the other Party with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution, any Party may move the Court to resolve the dispute.

17. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of court shall be properly filed unless the Party seeking to enforce this Consent Decree has followed the procedure set forth in Paragraph 16.
18. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree, to resolve any disputes thereunder, and to consider any requests for costs of litigation (including reasonable attorneys' fees). After EPA's obligations under Paragraphs 3 through 6 have been completed, EPA may move to have this consent decree terminated. Plaintiffs shall have 14 days in which to respond to such motion.
19. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by the Parties and that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.
20. The undersigned certify that they are fully authorized by the Party or Parties they represent to bind that Party or those Parties to the terms of this Consent Decree.
21. This decree does not resolve the claim in Plaintiffs' complaint regarding EPA's obligations with respect to Florida. Plaintiffs reserve the right to seek relief for that claim on any and all grounds. EPA agrees not to oppose Plaintiffs' prosecution of their claim with respect to Florida for any reason based upon the entry of the decree.

SO ORDERED this 30th day of March, 2012.



HON. AMY BERMAN JACKSON
United States District Judge

SO AGREED:

FOR PLAINTIFFS

/s/ REED ZARS
Attorney at Law
910 Kearney Street
Laramie, WY 82070
307-745-7979
rzars@lariat.org

/s/ DAVID BARON
Earthjustice
1625 Massachusetts Ave., NW, #702
Washington, DC 20036
202-667-4500 ext.203
dbaron@earthjustice.org

FOR DEFENDANT

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

/s/ EILEEN T. MCDONOUGH
Environmental Defense Section
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-3126

Of Counsel:

M. LEA ANDERSON
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460
(202) 564-5571
anderson.lea@epa.gov

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Friday, November 21, 2014 2:31 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Hi Leslie - Two things:

First, Richard Mays is representing Sierra Club in this case in the Arkansas federal court. He's cc'ed here. Please include Richard on future communications regarding this case.

Second, I was wondering if you'd had a chance to look at our proposed revisions to the consent decree? If you're uncomfortable with the attorneys' fees language we can put that dispute off till after the consent decree is agreed to. Though we do think we are entitled to attorneys' fees, our main goal is to get this decree lodged as soon as we can.

Tony

On Wed, Nov 5, 2014 at 9:40 AM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:
Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey -

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--

Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

--

Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Friday, November 21, 2014 2:37 PM
To: Tony Mendoza
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Tony -

Yes, we have a few revisions as well, but for the fees provision, I just added reasonable as a clarifying qualifier. I will send you the draft Monday. I'll also have another attorney join shortly but will stay involved.

Leslie

Sent from my iPhone

On Nov 21, 2014, at 3:30 PM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:

Hi Leslie - Two things:

First, Richard Mays is representing Sierra Club in this case in the Arkansas federal court. He's cc'ed here. Please include Richard on future communications regarding this case.

Second, I was wondering if you'd had a chance to look at our proposed revisions to the consent decree? If you're uncomfortable with the attorneys' fees language we can put that dispute off till after the consent decree is agreed to. Though we do think we are entitled to attorneys' fees, our main goal is to get this decree lodged as soon as we can.

Tony

On Wed, Nov 5, 2014 at 9:40 AM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:
Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey –

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--

Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

--

Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Monday, November 24, 2014 10:15 AM
To: Tony Mendoza
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: RE: Draft Consent Decree - Case No. 3:14-cv-03541-JD
Attachments: ENV_DEFENSE-#692054-v7-Sierra_Club_v_McCarthy_(AR_Haze)_Briefs_Draft_Proposed_Consent_Decree.DOC

Tony/Richard --

Attached please find the current draft of the proposed consent decree.

Leslie

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Friday, November 21, 2014 3:31 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Hi Leslie - Two things:

First, Richard Mays is representing Sierra Club in this case in the Arkansas federal court. He's cc'ed here. Please include Richard on future communications regarding this case.

Second, I was wondering if you'd had a chance to look at our proposed revisions to the consent decree? If you're uncomfortable with the attorneys' fees language we can put that dispute off till after the consent decree is agreed to. Though we do think we are entitled to attorneys' fees, our main goal is to get this decree lodged as soon as we can.

Tony

On Wed, Nov 5, 2014 at 9:40 AM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:

Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey --

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--

Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

--

Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

1 SAM HIRSCH
2 Acting Assistant Attorney General
3 Environment & Natural Resources Division
4 United States Department of Justice
5 LESLIE M. HILL (D.C. Bar No. 476008)
6 Leslie.Hill@usdoj.gov
7 Environmental Defense Section
8 601 D Street N.W., Suite 8000
9 Washington D.C. 20004
10 Telephone (202) 514-0375
11 Facsimile (202) 514-8865

12 Attorneys for Defendant

13 [Sierra Club Arkansas Counsel]

14 Attorneys for Plaintiff

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF ARKANSAS**

17 SIERRA CLUB,

18 Plaintiff,

19 v.

20 GINA McCARTHY, in her official capacity
21 as the Administrator of the United States
22 Environmental Protection Agency,

23 Defendant.

Case No. 4:14-cv-00643-JLH

[PROPOSED] CONSENT DECREE

24 WHEREAS, on August 6, 2014, Plaintiff Sierra Club ("Plaintiff") filed the above-
25 captioned matter in the U.S. District Court for the Northern District of California against
26 Gina McCarthy, in her official capacity as Administrator of the United States
27 Environmental Protection Agency (hereinafter "EPA" or "Defendant");

28 WHEREAS, by order Order dated October 30, 2014, the U.S. District Court for
the Northern District of California transferred this case to this District;

1 WHEREAS, Plaintiff alleges that EPA has failed to undertake certain non-
2 discretionary duties under the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and
3 that such alleged failure is actionable under section 304(a)(2) of the CAA, § 7604(a)(2);

4 WHEREAS, Plaintiff alleges that EPA has failed to perform a duty mandated by
5 CAA section 110(c)(1)(B), 42 U.S.C. § 7410(c)(1)(B), to promulgate a Federal
6 implementation plan within 2 years after disapproving a state implementation plan
7 ("SIP") submission in whole or in part;

8 WHEREAS, Plaintiff alleges that on March 12, 2012, EPA disapproved, in part,
9 a revision to the Arkansas SIP intended to address the regional haze ("RH") requirements
10 of section 169A(b)(2)(B), 42 U.S.C. § 7491(b)(2)(B), and the implementing regulations
11 set forth at 40 C.F.R. § 51.308(d)(1)(A), *Final Rule*, 77 Fed. Reg. 14,604 (Mar. 12,
12 2014);

13 WHEREAS, Plaintiff alleges that on March 12, 2012, EPA also partially
14 disapproved the portion of the Arkansas SIP submittal that addresses the visibility
15 requirement of section 110(a)(2)(D)(i)(II), 42 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997
16 8-hour ozone, *Final Rule*, 62 Fed. Reg. 38,856 (Jul 18, 1997), and 1997 fine particulate
17 matter ("PM_{2.5}"), *Final Rule*, 62 Fed. Reg. 38,652 (Jul 18, 1997), national ambient air
18 quality standards ("NAAQS") and that the provisions to prohibit emissions from
19 interfering with measures required in another state to protect visibility, 77 Fed. Reg. at
20 14,604;

21 WHEREAS, on March 12, 2012, EPA stated that it "must, within 24 months
22 following a final disapproval, either approve a SIP or promulgate a Federal
23 Implementation Plan ["FIP"]. We will of course consider, and would prefer, approving a
24 SIP if the state submits a revised plan that we can approve before the expiration of the
25 mandatory FIP clock for the portions of the SIP we are disapproving in this rulemaking
26 action," 77 Fed. Reg. at 14,606;

27 WHEREAS, Plaintiff alleges that the referenced EPA partial disapproval
28 decisions took effect on April 11, 2012;

1 WHEREAS, EPA did not, by April 11, 2014, promulgate a regional haze FIP or
2 approve a revised regional haze SIP for Arkansas;

3 WHEREAS, EPA did not, by April 11, 2014, promulgate a FIP or approve a
4 revised SIP for Arkansas addressing the requirements of section 110(a)(2)(D)(i)(II), 42
5 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5}
6 NAAQS;

7 WHEREAS, the relief requested in the Complaint includes, among other things,
8 an order from this Court to establish a date certain by which EPA must fulfill its
9 obligations;

10 WHEREAS, Plaintiff and EPA have agreed to a settlement of this action without
11 admission of any issue of fact or law, except as expressly provided herein;

12 WHEREAS, Plaintiff and EPA, by entering into this Consent Decree, do not
13 waive or limit any claim, remedy, or defense, on any grounds, related to any final EPA
14 action;

15 WHEREAS, Plaintiff and EPA consider this Consent Decree to be an adequate
16 and equitable resolution of all the claims in this matter and therefore wish to effectuate a
17 settlement;

18 WHEREAS, it is in the interest of the public, Plaintiff Sierra Club, Defendant
19 EPA, and judicial economy to resolve this matter without protracted litigation;

20 WHEREAS, Plaintiff and EPA agree that this Court has jurisdiction over this
21 matter pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. §
22 7604(a)(2); and

23 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent
24 Decree is fair, reasonable, in the public interest, and consistent with the Clean Air Act;

25 NOW THEREFORE, before the taking of testimony, without trial or
26 determination of any issues of fact or law, and upon the consent of Plaintiff Sierra Club
27 and Defendant EPA, it is hereby ordered, adjudged and decreed that:

28 1. The appropriate EPA official shall:

1 a. either sign a notice of proposed rulemaking in which it proposes
2 approval of a revised SIP submission from Arkansas, promulgation of a FIP, or partial
3 approval of a revised SIP submission and promulgation of a partial FIP for Arkansas that
4 collectively addresses the deficiencies in Arkansas' regional haze SIP identified by EPA
5 its March 12, 2012 action, 77 Fed. Reg. 14,604, no later than February 16, 2015; and sign
6 a notice of final rulemaking to address these requirements no later than December 15,
7 2015; and

8 b. either sign a notice of proposed rulemaking in which it proposes
9 approval of a revised SIP submission, promulgation of a FIP, or partial approval of a
10 revised SIP submission and promulgation of a partial FIP for Arkansas that collectively
11 addresses the deficiencies in Arkansas' SIP related to the requirements of CAA section
12 110(a)(2)(D)(i)(II), 42 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997 8-hour ozone NAAQS
13 and the 1997 PM_{2.5} NAAQS, identified by EPA its March 12, 2012 action, 77 Fed. Reg.
14 14,604, no later than February 16, 2015; and sign a notice of final rulemaking to address
15 these requirements no later than December 15, 2015.

16 2. EPA shall, within 15 days of signature^[A1], deliver notice of each action taken
17 pursuant to paragraph 1 of this Consent Decree to the Office of the Federal Register for
18 review and publication.

19 3. After EPA has completed the actions set forth in Paragraph 1 of this Consent
20 Decree and after notice of each proposed and final action required by paragraph 1 has
21 been published in the Federal Register, EPA may move to have this Decree terminated
22 and the action dismissed. Plaintiff shall have fourteen (14) days in which to respond to
23 such motion, unless the parties stipulate to a longer time for Plaintiff to respond.

24 4. The deadlines established by this Consent Decree may be extended (a) by
25 written stipulation of Plaintiff and EPA with notice to the Court, or (b) by the Court upon
26 motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure
27 and upon consideration of any response by Plaintiff and any reply by EPA. Any other
28 provision of this Consent Decree also may be modified by the Court following motion of

1 an undersigned party for good cause shown pursuant to the Federal Rules of Civil
2 Procedure and upon consideration of any response by a non-moving party and any reply.

3 5. The Parties recognize that the possibility exists that circumstances outside the
4 reasonable control of EPA could delay compliance with the timetables contained in this
5 Consent Decree. Such situations include, but are not limited to, a government shut-down
6 such as occurred in 1995, 1996, and 2013, or catastrophic environmental events requiring
7 immediate and/or time-consuming response by EPA. Should a delay occur due to such
8 circumstances, any resulting failure to meet the timetables set forth herein shall not
9 constitute a failure to comply with the terms of this Consent Decree, and the Parties will
10 meet and confer about the extension of any deadlines occurring within one hundred
11 twenty (120) days of the termination of the delay. Such dates shall be extended no less
12 than one day for each day of the delay. EPA will provide Plaintiff with notice as soon as
13 is reasonably possible under the circumstances in the event that EPA invokes this term of
14 the Consent Decree and will provide Plaintiff with an explanation of EPA's basis for
15 invoking this term. If the Parties are unable to reach agreement on an extension of such
16 deadlines exceeding one day for each day of delay, EPA reserves the right to move the
17 Court for such an extension. If a lapse in appropriations occurs within one hundred and
18 twenty (120) days prior to the deadline in Paragraph 1 in this Decree, that deadlines shall
19 be extended automatically one day for each day of the lapse in appropriations.

20 6. Plaintiff and EPA agree that this Consent Decree shall constitute a complete
21 and final settlement of all claims that Plaintiff has asserted in this case. The Sierra Club
22 therefore discharges and covenants not to sue the United States, including EPA, for any
23 such claims.

24 7. In the event of a dispute between Plaintiff and EPA concerning the
25 interpretation or implementation of any aspect of this Consent Decree, the disputing party
26 shall provide the other party with a written notice outlining the nature of the dispute and
27 requesting informal negotiations. These parties shall meet and confer in order to attempt
28 to resolve the dispute. If these parties are unable to resolve the dispute within ten (10)

1 business days after receipt of the notice, either party may petition the Court to resolve the
2 dispute.

3 8. No motion or other proceeding seeking to enforce this Consent Decree or for
4 contempt of Court shall be properly filed unless the procedure set forth in Paragraph 7
5 has been followed, and the moving party has provided the other party with written notice
6 received at least ten (10) business days before the filing of such motion or proceeding.

7 9. EPA agrees that Plaintiff is entitled to recover its "costs of litigation"
8 (including reasonable attorney fees) incurred in this matter pursuant to 42 U.S.C. §
9 7604(d). The deadline for filing a motion for costs of litigation (including attorney fees)
10 for activities performed prior to entry of the Consent Decree is hereby extended until
11 ninety (90) days after this Consent Decree is entered by the Court. During this period,
12 the Parties shall seek to resolve informally any claim for costs of litigation (including
13 attorney fees), and if they cannot, Plaintiff will file a motion for costs of litigation
14 (including attorney fees) or a stipulation or motion to extend the deadline to file such a
15 motion. Plaintiff reserves its right to seek litigation costs for any work performed after
16 the lodging of this Consent Decree. EPA does not concede that Plaintiff will be entitled
17 to recover costs incurred after the lodging of this Consent Decree, and the parties reserve
18 all claims and defenses with respect to any future claim for costs of litigation-claim. EPA
19 reserves the right to oppose any such request.

20 10. This Court shall retain jurisdiction over this matter to enforce the terms of
21 this Consent Decree and to consider any requests for costs of litigation, including
22 attorney fees.

23 11. Nothing in the terms of this Consent Decree shall be construed (a) to confer
24 upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction
25 of the United States Courts of Appeals under CAA section 307(b)(1),
26 42 U.S.C. § 7607(b)(1) or (b) to waive any claims, remedies, or defenses that the parties
27 may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).
28

1 12. Nothing in this Consent Decree shall be construed to limit or modify any
2 discretion accorded EPA by the Clean Air Act or by general principles of administrative
3 law in taking the actions which are the subject of this Consent Decree, including the
4 discretion to alter, amend, or revise any final actions promulgated pursuant to this
5 Consent Decree. EPA's obligation to perform each action specified in this Consent
6 Decree does not constitute a limitation or modification of EPA's discretion within the
7 meaning of this paragraph.

8 13. Except as expressly provided herein, nothing in this Consent Decree shall be
9 construed as an admission of any issue of fact or law nor to waive or limit any claim,
10 remedy, or defense, on any grounds, related to any final action EPA takes with respect to
11 the actions addressed in this Consent Decree.

12 14. It is hereby expressly understood and agreed that this Consent Decree was
13 jointly drafted by Plaintiff and EPA. Accordingly, the parties hereby agree that any and
14 all rules of construction to the effect that ambiguity is construed against the drafting party
15 shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of
16 this Consent Decree.

17 15. The parties agree and acknowledge that before this Consent Decree can be
18 finalized and entered by the Court, EPA must provide notice of this Consent Decree in
19 the Federal Register and an opportunity for public comment pursuant to CAA section
20 113(g), 42 U.S.C. § 7413(g). After this Consent Decree has undergone notice and
21 comment, the Administrator and/or the Attorney General, as appropriate, shall promptly
22 consider any written comments in determining whether to withdraw or withhold their
23 consent to the Consent Decree, in accordance with CAA section 113(g). If the
24 Administrator and/or the Attorney General do not elect to withdraw or withhold consent,
25 EPA shall promptly file a motion that requests that the Court enter this Consent Decree.

26 16. Any notices required or provided for by this Consent Decree shall be in
27 writing, via electronic mail or other means, and sent to the following (or to any new
28

1 address of counsel as filed and listed in the docket of the above-captioned matter, at a
2 future date):

3 For Plaintiff Sierra Club:

4 [Sierra Club Arkansas Counsel]

5 Casey A. Roberts
6 Tony G. Mendoza
7 Sierra Club
8 85 Second Street, 211d Floor
9 San Francisco, CA 94105
10 (415) 977-5710 (Roberts)
11 (415) 977-5589 (Mendoza)
12 (415) 977-5793 (facsimile)
13 casey.roberts@sierraclub.org
14 tony.mendoza@sierraclub.org

15 For Defendant EPA:

16 Leslie M. Hill
17 U.S. Department of Justice
18 Environment & Natural Resources Division
19 Environmental Defense Section
20 601 D Street N.W., Suite 8000
21 Washington D.C. 20004
22 Tel: (202) 514-0375
23 Email: leslie.hill@usdoj.gov

24 17. EPA and Plaintiff recognize and acknowledge that the obligations imposed
25 upon EPA under this Consent Decree can only be undertaken using appropriated funds
26 legally available for such purpose. No provision of this Consent Decree shall be
27 interpreted as or constitute a commitment or requirement that the United States obligate
28 or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
applicable provision of law.

18 18. If for any reason the Court should decline to approve this Consent Decree in
19 the form presented, this agreement is voidable at the sole discretion of either party and
20 the terms of the proposed Consent Decree may not be used as evidence in any litigation
21 between the parties.

1 19. The undersigned representatives of Plaintiff Sierra Club and Defendant EPA
2 certify that they are fully authorized by the party they represent to consent to the Court's
3 entry of the terms and conditions of this Decree.

4
5 SO ORDERED on this _____ day of _____, 2014.
6

7
8 _____
9 JAMES L. HOLMES
10 UNITED STATES DISTRICT JUDGE

11 //

12 //

13 COUNSEL FOR PLAINTIFF:

14 _____
15 [Sierra Club Arkansas Counsel]

16 CASEY A. ROBERTS (CA Bar No. 253474)
17 SIERRA CLUB
18 85 Second Street, 211d Floor
19 San Francisco, CA 94105
20 (415) 977-5710
21 (415) 977-5793 (facsimile)
22 casey.roberts@sierraclub.org

23 TONY G. MENDOZA (admitted *Pro Hac Vice*)
24 SIERRA CLUB
25 85 Second Street, 2nd Floor
26 San Francisco, CA 94105
27 (415) 977-5589
28 (415) 977-5793 (facsimile)
tony.mendoza@sierraclub.org

Attorneys for Plaintiff Sierra Club

1 COUNSEL FOR DEFENDANT: SAM HIRSCH
2 Acting Assistant Attorney General
3 Environment & Natural Resources Division

4 /s/ Leslie M. Hill

5 LESLIE M. HILL (D.C. Bar No. 476008)
6 Environmental Defense Section
7 601 D Street N.W., Suite 8000
8 Washington D.C. 20004
9 Tel. (202) 514-0375
10 Email: Leslie.Hill@usdoj.gov

11 *Attorneys for Defendant EPA*

12 Of counsel:
13 Barbara A. Nann
14 Assistant Regional Counsel
15 Region 6
16 U.S. Environmental Protection Agency
17
18
19
20
21
22
23
24
25
26
27
28

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Tuesday, November 25, 2014 5:38 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD
Attachments: Consent Decree (Draft 11-24-14) - SC.doc

Leslie - Your revisions all are fine with us. The attached version includes Richard's signature block; otherwise, we have no changes. We have approval to sign this consent decree on our end and Richard has offered to help file it. Let us know if you'd like his help or need anything else from us. Tony

On Mon, Nov 24, 2014 at 8:14 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Richard –

Attached please find the current draft of the proposed consent decree.

Leslie

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Friday, November 21, 2014 3:31 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Hi Leslie - Two things:

First, Richard Mays is representing Sierra Club in this case in the Arkansas federal court. He's cc'ed here. Please include Richard on future communications regarding this case.

Second, I was wondering if you'd had a chance to look at our proposed revisions to the consent decree? If you're uncomfortable with the attorneys' fees language we can put that dispute off till after the consent decree is agreed to. Though we do think we are entitled to attorneys' fees, our main goal is to get this decree lodged as soon as we can.

Tony

On Wed, Nov 5, 2014 at 9:40 AM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:

Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey --

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

1 SAM HIRSCH
2 Acting Assistant Attorney General
3 Environment & Natural Resources Division
4 United States Department of Justice
5 LESLIE M. HILL (D.C. Bar No. 476008)
6 Leslie.Hill@usdoj.gov
7 Environmental Defense Section
8 601 D Street N.W., Suite 8000
9 Washington D.C. 20004
10 Telephone (202) 514-0375
11 Facsimile (202) 514-8865

12 Attorneys for Defendant

13 Richard H. Mays (AR Bar No. 61043)
14 RICHARD MAYS LAW FIRM, PLLC
15 115 South Third Street
16 Heber Springs, AR 72543
17 [~~Sierra Club Arkansas Counsel~~]

18 Attorneys for Plaintiff

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE EASTERN DISTRICT OF ARKANSAS**

21 SIERRA CLUB,

22 Plaintiff,

23 v.

24 GINA McCARTHY, in her official capacity
25 as the Administrator of the United States
26 Environmental Protection Agency,

27 Defendant.

Case No. 4:14-cv-00643-JLH

[PROPOSED] CONSENT DECREE

28 WHEREAS, on August 6, 2014, Plaintiff Sierra Club ("Plaintiff") filed the above-captioned matter in the U.S. District Court for the Northern District of California against Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (hereinafter "EPA" or "Defendant");

[PROPOSED] CONSENT DECREE
CASE NO. 4:14-cv-00643-JLH

1 WHEREAS, by ~~order~~ Order dated October 30, 2014, the U.S. District Court for
2 the Northern District of California transferred this case to this District;

3 WHEREAS, Plaintiff alleges that EPA has failed to undertake certain non-
4 discretionary duties under the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and
5 that such alleged failure is actionable under section 304(a)(2) of the CAA, § 7604(a)(2);

6 WHEREAS, Plaintiff alleges that EPA has failed to perform a duty mandated by
7 CAA section 110(c)(1)(B), 42 U.S.C. § 7410(c)(1)(B), to promulgate a Federal
8 implementation plan within 2 years after disapproving a state implementation plan
9 ("SIP") submission in whole or in part;

10 WHEREAS, Plaintiff alleges that on March 12, 2012, EPA disapproved, in part,
11 a revision to the Arkansas SIP intended to address the regional haze ("RH") requirements
12 of section 169A(b)(2)(B), 42 U.S.C. § 7491(b)(2)(B), and the implementing regulations
13 set forth at 40 C.F.R. § 51.308(d)(1)(A), *Final Rule*, 77 Fed. Reg. 14,604 (Mar. 12,
14 2014);

15 WHEREAS, Plaintiff alleges that on March 12, 2012, EPA also partially
16 disapproved the portion of the Arkansas SIP submittal that addresses the visibility
17 requirement of section 110(a)(2)(D)(i)(II), 42 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997
18 8-hour ozone, *Final Rule*, 62 Fed. Reg. 38,856 (Jul 18, 1997), and 1997 fine particulate
19 matter ("PM_{2.5}"), *Final Rule*, 62 Fed. Reg. 38,652 (Jul 18, 1997), national ambient air
20 quality standards ("NAAQS") and that the provisions to prohibit emissions from
21 interfering with measures required in another state to protect visibility, 77 Fed. Reg. at
22 14,604;

23 WHEREAS, on March 12, 2012, EPA stated that it "must, within 24 months
24 following a final disapproval, either approve a SIP or promulgate a Federal
25 Implementation Plan ["FIP"]. We will of course consider, and would prefer, approving a
26 SIP if the state submits a revised plan that we can approve before the expiration of the
27 mandatory FIP clock for the portions of the SIP we are disapproving in this rulemaking
28 action," 77 Fed. Reg. at 14,606;

1 WHEREAS, Plaintiff alleges that the referenced EPA partial disapproval
2 decisions took effect on April 11, 2012;

3 WHEREAS, EPA did not, by April 11, 2014, promulgate a regional haze FIP or
4 approve a revised regional haze SIP for Arkansas;

5 WHEREAS, EPA did not, by April 11, 2014, promulgate a FIP or approve a
6 revised SIP for Arkansas addressing the requirements of section 110(a)(2)(D)(i)(II), 42
7 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5}
8 NAAQS;

9 WHEREAS, the relief requested in the Complaint includes, among other things,
10 an order from this Court to establish a date certain by which EPA must fulfill its
11 obligations;

12 WHEREAS, Plaintiff and EPA have agreed to a settlement of this action without
13 admission of any issue of fact or law, except as expressly provided herein;

14 WHEREAS, Plaintiff and EPA, by entering into this Consent Decree, do not
15 waive or limit any claim, remedy, or defense, on any grounds, related to any final EPA
16 action;

17 WHEREAS, Plaintiff and EPA consider this Consent Decree to be an adequate
18 and equitable resolution of all the claims in this matter and therefore wish to effectuate a
19 settlement;

20 WHEREAS, it is in the interest of the public, Plaintiff Sierra Club, Defendant
21 EPA, and judicial economy to resolve this matter without protracted litigation;

22 WHEREAS, Plaintiff and EPA agree that this Court has jurisdiction over this
23 matter pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. §
24 7604(a)(2); and

25 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent
26 Decree is fair, reasonable, in the public interest, and consistent with the Clean Air Act;

1 NOW THEREFORE, before the taking of testimony, without trial or
2 determination of any issues of fact or law, and upon the consent of Plaintiff Sierra Club
3 and Defendant EPA, it is hereby ordered, adjudged and decreed that:

4 1. The appropriate EPA official shall:

5 a. either sign a notice of proposed rulemaking in which it proposes
6 approval of a revised SIP submission from Arkansas, promulgation of a FIP, or partial
7 approval of a revised SIP submission and promulgation of a partial FIP for Arkansas that
8 collectively addresses the deficiencies in Arkansas' regional haze SIP identified by EPA
9 its March 12, 2012 action, 77 Fed. Reg. 14,604, no later than February 16, 2015; and sign
10 a notice of final rulemaking to address these requirements no later than December 15,
11 2015; and

12 b. either sign a notice of proposed rulemaking in which it proposes
13 approval of a revised SIP submission, promulgation of a FIP, or partial approval of a
14 revised SIP submission and promulgation of a partial FIP for Arkansas that collectively
15 addresses the deficiencies in Arkansas' SIP related to the requirements of CAA section
16 110(a)(2)(D)(i)(II), 42 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997 8-hour ozone NAAQS
17 and the 1997 PM_{2.5} NAAQS, identified by EPA its March 12, 2012 action, 77 Fed. Reg.
18 14,604, no later than February 16, 2015; and sign a notice of final rulemaking to address
19 these requirements no later than December 15, 2015.

20 2. EPA shall, within 15 days of signature, deliver notice of each action taken
21 pursuant to paragraph 1 of this Consent Decree to the Office of the Federal Register for
22 review and publication.

23 3. After EPA has completed the actions set forth in Paragraph 1 of this Consent
24 Decree and after notice of each proposed and final action required by paragraph 1 has
25 been published in the Federal Register, EPA may move to have this Decree terminated
26 and the action dismissed. Plaintiff shall have fourteen (14) days in which to respond to
27 such motion, unless the parties stipulate to a longer time for Plaintiff to respond.
28

1 4. The deadlines established by this Consent Decree may be extended (a) by
2 written stipulation of Plaintiff and EPA with notice to the Court, or (b) by the Court upon
3 motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure
4 and upon consideration of any response by Plaintiff and any reply by EPA. Any other
5 provision of this Consent Decree also may be modified by the Court following motion of
6 an undersigned party for good cause shown pursuant to the Federal Rules of Civil
7 Procedure and upon consideration of any response by a non-moving party and any reply.

8 5. The Parties recognize that the possibility exists that circumstances outside the
9 reasonable control of EPA could delay compliance with the timetables contained in this
10 Consent Decree. Such situations include, but are not limited to, a government shut-down
11 such as occurred in 1995, 1996, and 2013, or catastrophic environmental events requiring
12 immediate and/or time-consuming response by EPA. Should a delay occur due to such
13 circumstances, any resulting failure to meet the timetables set forth herein shall not
14 constitute a failure to comply with the terms of this Consent Decree, and the Parties will
15 meet and confer about the extension of any deadlines occurring within one hundred
16 twenty (120) days of the termination of the delay. Such dates shall be extended no less
17 than one day for each day of the delay. EPA will provide Plaintiff with notice as soon as
18 is reasonably possible under the circumstances in the event that EPA invokes this term of
19 the Consent Decree and will provide Plaintiff with an explanation of EPA's basis for
20 invoking this term. If the Parties are unable to reach agreement on an extension of such
21 deadlines exceeding one day for each day of delay, EPA reserves the right to move the
22 Court for such an extension. If a lapse in appropriations occurs within one hundred and
23 twenty (120) days prior to the deadline in Paragraph 1 in this Decree, that deadlines shall
24 be extended automatically one day for each day of the lapse in appropriations.

25 6. Plaintiff and EPA agree that this Consent Decree shall constitute a complete
26 and final settlement of all claims that Plaintiff has asserted in this case. The Sierra Club
27 therefore discharges and covenants not to sue the United States, including EPA, for any
28 such claims.

1 7. In the event of a dispute between Plaintiff and EPA concerning the
2 interpretation or implementation of any aspect of this Consent Decree, the disputing party
3 shall provide the other party with a written notice outlining the nature of the dispute and
4 requesting informal negotiations. These parties shall meet and confer in order to attempt
5 to resolve the dispute. If these parties are unable to resolve the dispute within ten (10)
6 business days after receipt of the notice, either party may petition the Court to resolve the
7 dispute.

8 8. No motion or other proceeding seeking to enforce this Consent Decree or for
9 contempt of Court shall be properly filed unless the procedure set forth in Paragraph 7
10 has been followed, and the moving party has provided the other party with written notice
11 received at least ten (10) business days before the filing of such motion or proceeding.

12 9. EPA agrees that Plaintiff is entitled to recover its "costs of litigation"
13 (including reasonable attorney fees) incurred in this matter pursuant to 42 U.S.C. §
14 7604(d). The deadline for filing a motion for costs of litigation (including attorney fees)
15 for activities performed prior to entry of the Consent Decree is hereby extended until
16 ninety (90) days after this Consent Decree is entered by the Court. During this period,
17 the Parties shall seek to resolve informally any claim for costs of litigation (including
18 attorney fees), and if they cannot, Plaintiff will file a motion for costs of litigation
19 (including attorney fees) or a stipulation or motion to extend the deadline to file such a
20 motion. Plaintiff reserves its right to seek litigation costs for any work performed after
21 the lodging of this Consent Decree. EPA does not concede that Plaintiff will be entitled
22 to recover costs incurred after the lodging of this Consent Decree, and the parties reserve
23 all claims and defenses with respect to any future claim for costs of litigation-claim. EPA
24 ~~reserves the right to oppose any such request.~~

25 10. This Court shall retain jurisdiction over this matter to enforce the terms of
26 this Consent Decree and to consider any requests for costs of litigation, including
27 attorney fees.
28

1 11. Nothing in the terms of this Consent Decree shall be construed (a) to confer
2 upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction
3 of the United States Courts of Appeals under CAA section 307(b)(1),
4 42 U.S.C. § 7607(b)(1) or (b) to waive any claims, remedies, or defenses that the parties
5 may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

6 12. Nothing in this Consent Decree shall be construed to limit or modify any
7 discretion accorded EPA by the Clean Air Act or by general principles of administrative
8 law in taking the actions which are the subject of this Consent Decree, including the
9 discretion to alter, amend, or revise any final actions promulgated pursuant to this
10 Consent Decree. EPA's obligation to perform each action specified in this Consent
11 Decree does not constitute a limitation or modification of EPA's discretion within the
12 meaning of this paragraph.

13 13. Except as expressly provided herein, nothing in this Consent Decree shall be
14 construed as an admission of any issue of fact or law nor to waive or limit any claim,
15 remedy, or defense, on any grounds, related to any final action EPA takes with respect to
16 the actions addressed in this Consent Decree.

17 14. It is hereby expressly understood and agreed that this Consent Decree was
18 jointly drafted by Plaintiff and EPA. Accordingly, the parties hereby agree that any and
19 all rules of construction to the effect that ambiguity is construed against the drafting party
20 shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of
21 this Consent Decree.

22 15. The parties agree and acknowledge that before this Consent Decree can be
23 finalized and entered by the Court, EPA must provide notice of this Consent Decree in
24 the Federal Register and an opportunity for public comment pursuant to CAA section
25 113(g), 42 U.S.C. § 7413(g). After this Consent Decree has undergone notice and
26 comment, the Administrator and/or the Attorney General, as appropriate, shall promptly
27 consider any written comments in determining whether to withdraw or withhold their
28 consent to the Consent Decree, in accordance with CAA section 113(g). If the

1 Administrator and/or the Attorney General do not elect to withdraw or withhold consent,
2 EPA shall promptly file a motion that requests that the Court enter this Consent Decree.

3 16. Any notices required or provided for by this Consent Decree shall be in
4 writing, via electronic mail or other means, and sent to the following (or to any new
5 address of counsel as filed and listed in the docket of the above-captioned matter, at a
6 future date):

7 For Plaintiff Sierra Club:

8 Richard H. Mays, Esq.
9 RICHARD MAYS LAW FIRM, PLLC
10 115 South Third Street
11 Heber Springs, AR 72543
12 [Sierra Club Arkansas Counsel]

13 Casey A. Roberts
14 Tony G. Mendoza
15 Sierra Club
16 85 Second Street, 211d Floor
17 San Francisco, CA 94105
18 (415) 977-5710 (Roberts)
19 (415) 977-5589 (Mendoza)
20 (415) 977-5793 (facsimile)
21 casey.roberts@sierraclub.org
22 tony.mendoza@sierraclub.org

23 For Defendant EPA:

24 Leslie M. Hill
25 U.S. Department of Justice
26 Environment & Natural Resources Division
27 Environmental Defense Section
28 601 D Street N.W., Suite 8000
Washington D.C. 20004
Tel. (202) 514-0375
Email: leslie.hill@usdoj.gov

17. EPA and Plaintiff recognize and acknowledge that the obligations imposed
upon EPA under this Consent Decree can only be undertaken using appropriated funds
legally available for such purpose. No provision of this Consent Decree shall be
interpreted as or constitute a commitment or requirement that the United States obligate

1 or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
2 applicable provision of law.

3 18. If for any reason the Court should decline to approve this Consent Decree in
4 the form presented, this agreement is voidable at the sole discretion of either party and
5 the terms of the proposed Consent Decree may not be used as evidence in any litigation
6 between the parties.

7 19. The undersigned representatives of Plaintiff Sierra Club and Defendant EPA
8 certify that they are fully authorized by the party they represent to consent to the Court's
9 entry of the terms and conditions of this Decree.

10
11 SO ORDERED on this _____ day of _____, 2014.

12
13
14 J. JAMES LEON- HOLMES
15 UNITED STATES DISTRICT JUDGE

16 #
17 #
18 COUNSEL FOR PLAINTIFF:

19
20 Richard H. Mays (AR Bar No. 61043)
21 RICHARD MAYS LAW FIRM, PLLC
22 115 South Third Street
23 Heber Springs, AR 72543
[Sierra Club Arkansas Counsel]

24 CASEY A. ROBERTS (CA Bar No. 253474)
25 SIERRA CLUB
26 85 Second Street, 211d Floor
27 San Francisco, CA 94105
28 (415) 977-5710
(415) 977-5793 (facsimile)
casey.roberts@sierraclub.org

1 TONY G. MENDOZA (~~admitted Pro Hac Vice~~)
2 SIERRA CLUB
3 85 Second Street, 2nd Floor
4 San Francisco, CA 94105
5 (415) 977-5589
6 (415) 977-5793 (facsimile)
7 tony.mendoza@sierraclub.org

8 *Attorneys for Plaintiff Sierra Club*

9 COUNSEL FOR DEFENDANT:

10 SAM HIRSCH
11 Acting Assistant Attorney General
12 Environment & Natural Resources Division

13 /s/ Leslie M. Hill

14 LESLIE M. HILL (D.C. Bar No. 476008)
15 Environmental Defense Section
16 601 D Street N.W., Suite 8000
17 Washington D.C. 20004
18 Tel: (202) 514-0375
19 Email: Leslie.Hill@usdoj.gov

20 *Attorneys for Defendant EPA*

21 Of counsel:
22 Barbara A. Nann
23 Assistant Regional Counsel
24 Region 6
25 U.S. Environmental Protection Agency
26
27
28

Nann, Barbara

From: Nann, Barbara
Sent: Friday, December 05, 2014 3:55 PM
To: Tony Mendoza; Hill, Leslie (ENRD)
Cc: Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: RE: Draft Consent Decree - Case No. 3:14-cv-03541-JD

A quick edit. I noticed that the proposal due date February 16, 2015 is a federal holiday (President's Day). Can we change the proposal due date to Tuesday, February 17, 2015?

Barbara

Barbara A. Nann
Assistant Regional Counsel
OECA & OGC Lead Region Coordinator
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202
Phone: (214) 665-2157
Work Cell: (469) 416-9629
Fax: (214) 665-2182

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Tuesday, November 25, 2014 5:38 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Leslie - Your revisions all are fine with us. The attached version includes Richard's signature block; otherwise, we have no changes. We have approval to sign this consent decree on our end and Richard has offered to help file it. Let us know if you'd like his help or need anything else from us. Tony

On Mon, Nov 24, 2014 at 8:14 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Richard –

Attached please find the current draft of the proposed consent decree.

Leslie

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Friday, November 21, 2014 3:31 PM

To: Hill, Leslie (ENRD)

Cc: Nann, Barbara; Anderson, Lea; rhmay@richardmayslawfirm.com; Casey Roberts

Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Hi Leslie - Two things:

First, Richard Mays is representing Sierra Club in this case in the Arkansas federal court. He's cc'ed here. Please include Richard on future communications regarding this case.

Second, I was wondering if you'd had a chance to look at our proposed revisions to the consent decree? If you're uncomfortable with the attorneys' fees language we can put that dispute off till after the consent decree is agreed to. Though we do think we are entitled to attorneys' fees, our main goal is to get this decree lodged as soon as we can.

Tony

On Wed, Nov 5, 2014 at 9:40 AM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:

Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey –

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--
Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--
Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--
Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Friday, December 05, 2014 3:59 PM
To: Nann, Barbara
Cc: Hill, Leslie (ENRD); Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Yes. That edit is fine with us.

On Fri, Dec 5, 2014 at 1:54 PM, Nann, Barbara <nann.barbara@epa.gov> wrote:

A quick edit. I noticed that the proposal due date February 16, 2015 is a federal holiday (President's Day). Can we change the proposal due date to Tuesday, February 17, 2015?

Barbara

Barbara A. Nann

Assistant Regional Counsel

OECA & OGC Lead Region Coordinator

U.S. Environmental Protection Agency, Region 6

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202

Phone: (214) 665-2157

Work Cell: (469) 416-9629

Fax: (214) 665-2182

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]

Sent: Tuesday, November 25, 2014 5:38 PM

To: Hill, Leslie (ENRD)

Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts

Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Leslie - Your revisions all are fine with us. The attached version includes Richard's signature block; otherwise, we have no changes. We have approval to sign this consent decree on our end and Richard has offered to help file it. Let us know if you'd like his help or need anything else from us. Tony

On Mon, Nov 24, 2014 at 8:14 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Richard --

Attached please find the current draft of the proposed consent decree.

Leslie

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]

Sent: Friday, November 21, 2014 3:31 PM

To: Hill, Leslie (ENRD)

Cc: Nann, Barbara; Anderson, Lea; rhmay@richardmayslawfirm.com; Casey Roberts

Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Hi Leslie - Two things:

First, Richard Mays is representing Sierra Club in this case in the Arkansas federal court. He's cc'ed here. Please include Richard on future communications regarding this case.

Second, I was wondering if you'd had a chance to look at our proposed revisions to the consent decree? If you're uncomfortable with the attorneys' fees language we can put that dispute off till after the consent decree is agreed to. Though we do think we are entitled to attorneys' fees, our main goal is to get this decree lodged as soon as we can.

Tony

On Wed, Nov 5, 2014 at 9:40 AM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:

Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey -

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--
Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--
Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--
Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Friday, December 05, 2014 4:28 PM
To: 'Tony Mendoza'; Nann, Barbara
Cc: Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: RE: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Thanks Tony.

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Friday, December 05, 2014 4:59 PM
To: Nann, Barbara
Cc: Hill, Leslie (ENRD); Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Yes. That edit is fine with us.

On Fri, Dec 5, 2014 at 1:54 PM, Nann, Barbara <nann.barbara@epa.gov> wrote:

A quick edit. I noticed that the proposal due date February 16, 2015 is a federal holiday (President's Day). Can we change the proposal due date to Tuesday, February 17, 2015?

Barbara

Barbara A. Nann

Assistant Regional Counsel

OECA & OGC Lead Region Coordinator

U.S. Environmental Protection Agency, Region 6

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202

Phone: (214) 665-2157

Work Cell: (469) 416-9629

Fax: (214) 665-2182

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Tuesday, November 25, 2014 5:38 PM

To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmayes@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Leslie - Your revisions all are fine with us. The attached version includes Richard's signature block; otherwise, we have no changes. We have approval to sign this consent decree on our end and Richard has offered to help file it. Let us know if you'd like his help or need anything else from us. Tony

On Mon, Nov 24, 2014 at 8:14 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Richard –

Attached please find the current draft of the proposed consent decree.

Leslie

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Friday, November 21, 2014 3:31 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmayes@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Hi Leslie - Two things:

First, Richard Mays is representing Sierra Club in this case in the Arkansas federal court. He's cc'ed here. Please include Richard on future communications regarding this case.

Second, I was wondering if you'd had a chance to look at our proposed revisions to the consent decree? If you're uncomfortable with the attorneys' fees language we can put that dispute off till after the consent decree

is agreed to. Though we do think we are entitled to attorneys' fees, our main goal is to get this decree lodged as soon as we can.

Tony

On Wed, Nov 5, 2014 at 9:40 AM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:

Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey -

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Tuesday, December 16, 2014 2:05 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Leslie - At your convenience, could you provide us an update on when this consent decree might be ready for filing? I hope we can have this case resolved before the holidays. We remain willing to assist with the logistics of filing if that's helpful to you. Thanks. Tony

On Fri, Dec 5, 2014 at 2:28 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Thanks Tony.

From: Tony Mendoza [<mailto:tony.mendoza@sierraclub.org>]
Sent: Friday, December 05, 2014 4:59 PM
To: Nann, Barbara
Cc: Hill, Leslie (ENRD); Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts

Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Yes. That edit is fine with us.

On Fri, Dec 5, 2014 at 1:54 PM, Nann, Barbara <nann.barbara@epa.gov> wrote:

A quick edit. I noticed that the proposal due date February 16, 2015 is a federal holiday (President's Day). Can we change the proposal due date to Tuesday, February 17, 2015?

Barbara

Barbara A. Nann

Assistant Regional Counsel

OECA & OGC Lead Region Coordinator

U.S. Environmental Protection Agency, Region 6

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202

Phone: [\(214\) 665-2157](tel:(214)665-2157)

Work Cell: [\(469\) 416-9629](tel:(469)416-9629)

Fax: [\(214\) 665-2182](tel:(214)665-2182)

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]

Sent: Tuesday, November 25, 2014 5:38 PM

To: Hill, Leslie (ENRD)

Cc: Nann, Barbara; Anderson, Lea; rhmayes@richardmayslawfirm.com; Casey Roberts

Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Leslie - Your revisions all are fine with us. The attached version includes Richard's signature block; otherwise, we have no changes. We have approval to sign this consent decree on our end and Richard has offered to help file it. Let us know if you'd like his help or need anything else from us. Tony

On Mon, Nov 24, 2014 at 8:14 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Richard –

Attached please find the current draft of the proposed consent decree.

Leslie

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]

Sent: Friday, November 21, 2014 3:31 PM

To: Hill, Leslie (ENRD)

Cc: Nann, Barbara; Anderson, Lea; rhmayes@richardmayslawfirm.com; Casey Roberts

Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Hi Leslie - Two things:

First, Richard Mays is representing Sierra Club in this case in the Arkansas federal court. He's cc'ed here. Please include Richard on future communications regarding this case.

Second, I was wondering if you'd had a chance to look at our proposed revisions to the consent decree? If you're uncomfortable with the attorneys' fees language we can put that dispute off till after the consent decree is agreed to. Though we do think we are entitled to attorneys' fees, our main goal is to get this decree lodged as soon as we can.

Tony

On Wed, Nov 5, 2014 at 9:40 AM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:

Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey –

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Tuesday, December 16, 2014 4:29 PM
To: Tony Mendoza
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: RE: Draft Consent Decree - Case No. 3:14-cv-03541-JD
Attachments: ENV_DEFENSE-#705598-v6-SC_v_McCarthy_(AK_Haze)_Proposed_Consent_Decree_121614.DOC

Tony –

Per our conversation, attached is a revised CD w/ the changes I mentioned.

Leslie

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Tuesday, December 16, 2014 3:05 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Leslie - At your convenience, could you provide us an update on when this consent decree might be ready for filing? I hope we can have this case resolved before the holidays. We remain willing to assist with the logistics of filing if that's helpful to you. Thanks. Tony

On Fri, Dec 5, 2014 at 2:28 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Thanks Tony.

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Friday, December 05, 2014 4:59 PM
To: Nann, Barbara
Cc: Hill, Leslie (ENRD); Anderson, Lea; rhmays@richardmayslawfirm.com; Casey Roberts

Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Yes. That edit is fine with us.

On Fri, Dec 5, 2014 at 1:54 PM, Nann, Barbara <nann.barbara@epa.gov> wrote:

A quick edit. I noticed that the proposal due date February 16, 2015 is a federal holiday (President's Day). Can we change the proposal due date to Tuesday, February 17, 2015?

Barbara

Barbara A. Nann

Assistant Regional Counsel

OECA & OGC Lead Region Coordinator

U.S. Environmental Protection Agency, Region 6

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202

Phone: (214) 665-2157

Work Cell: (469) 416-9629

Fax: (214) 665-2182

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]

Sent: Tuesday, November 25, 2014 5:38 PM

To: Hill, Leslie (ENRD)

Cc: Nann, Barbara; Anderson, Lea; rhmay@richardmayslawfirm.com; Casey Roberts

Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Leslie - Your revisions all are fine with us. The attached version includes Richard's signature block; otherwise, we have no changes. We have approval to sign this consent decree on our end and Richard has offered to help file it. Let us know if you'd like his help or need anything else from us. Tony

On Mon, Nov 24, 2014 at 8:14 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Richard –

Attached please find the current draft of the proposed consent decree.

Leslie

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Friday, November 21, 2014 3:31 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea; rhmayes@richardmayeslawfirm.com; Casey Roberts
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Hi Leslie - Two things:

First, Richard Mays is representing Sierra Club in this case in the Arkansas federal court. He's cc'ed here. Please include Richard on future communications regarding this case.

Second, I was wondering if you'd had a chance to look at our proposed revisions to the consent decree? If you're uncomfortable with the attorneys' fees language we can put that dispute off till after the consent decree is agreed to. Though we do think we are entitled to attorneys' fees, our main goal is to get this decree lodged as soon as we can.

Tony

On Wed, Nov 5, 2014 at 9:40 AM, Tony Mendoza <tony.mendoza@sierraclub.org> wrote:

Leslie -

Attached are some proposed revisions to the consent decree. Of particular note, we suggest a revision to the attorneys' fees paragraph to indicate that EPA agrees Sierra Club is entitled to costs of litigation up to the date of lodging the consent decree. The reasonableness of any particular costs would of course be subject to negotiation (or a Sierra Club motion if it comes to it). I borrowed this language from a consent decree that was filed in another deadline suit (attached here). I think this revised language is reasonable, correctly reflects the law, and, if adopted, would streamline our costs discussions after the consent decree is filed.

In terms of timing, we should be prepared to have our local counsel enter an appearance in the Arkansas court next week. And, assuming we can come to final agreement on the details of the consent decree, we should have approval to settle by next week as well.

Please don't hesitate to call me if there are issues we should discuss.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey –

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org

--

Tony G Mendoza

Staff Attorney

Sierra Club Environmental Law Program

85 Second St., 2nd Floor

San Francisco, CA 94105

(415) 977-5589

(415) 977-5793 fax

tony.mendoza@sierraclub.org